

AMENDMENTS TO THE DRAWINGS

The Figure is amended to show an example of an electronic means.

Attachment: Replacement Sheet

REMARKS

Summary Of The Office Action & Formalities

Status of Claims

Claims 1-7 are all the claims pending in the application. By this Amendment, Applicant is amending claims 1-5 and 7, canceling claims 3 and 6, and adding new claims 8-11. No new matter is added.

Additional Fees

Submitted herewith is a Petition for Extension of Time with fee.

Claim to Foreign Priority

Applicant thanks the Examiner for acknowledging the claim to foreign priority and for confirming that the certified copy of the priority document was received.

Information Disclosure Statement

Applicant also thanks the Examiner for initialing the references listed on form PTO/SB/08 submitted with the Information Disclosure Statement filed on April 28, 2006.

Drawings

The drawings are objected to under 37 CFR 1.83(a) at page 2 of the Office Action. The Examiner states:

The drawings must show every feature of the invention specified in the claims. Therefore, the “dose counter” and “electronic means” as recited in claims 5 and 6 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Applicant is amending the drawings to overcome this objection.

Claim Rejections - § 112

Claims 1-7 are rejected under 35 U.S.C. § 112, second paragraph, at page 3 of the Office Action, as being indefinite for the following reasons.

Regarding claims 1-7, the phrase “such as”, found in claim 1, renders the claims indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Regarding claim 7, applicant fails to disclose adaptation of pump necessary to “dispense product so finely sprayed that this spraying is undetectable by the user.”

Applicant is amending the claims to overcome this rejection. Applicant notes that a further detailed illustration is not essential for a proper understanding of a dispenser that dispenses a fine mist as presently recited in claim 7.

Art Rejections

1. Claims 1 and 5-7 are rejected under 35 U.S.C. § 102(e) as being anticipated by Tomaka (US 6,651,844).

2. Claims 2-4 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tomaka (US 6,651,844) in view of Rocci (US 6,138,669).

Applicant respectfully traverses.

Claim Rejections - 35 U.S.C. § 102

1. Claims 1 and 5-7 In View Of Tomaka (US 6,651,844).

In rejecting claims 1 and 5-7 in view of Tomaka (US 6,651,844), the grounds of rejection state:

Regarding claims 1 and 5-7, Tomaka et al. discloses a fluid product nasal atomizing and spraying device (10) comprising a pump (column 3, lines 17-18), a spray head (20) (fig. 2) to actuate the pump manually (column 3, lines 27-28), and a dispensing detection means (40) to detect that a product [dose] has been

dispensed. The detection means (40), which is connected to electronic means (52) to process the signal, outputs a signal to inform the user that a dose has been dispensed by the pump (column 5, lines 8-12) as well as decrements a [does] counter (40) (column 5, lines 13-16).

Office Action at pages 3-4.

Without commenting on or agreeing to the rejection of claim 1, Applicant has amended this claim to include the feature of claim 3, thereby rendering this rejection moot.

Claim Rejections - 35 U.S.C. § 103

2. Claims 2-4 Over Tomaka (US 6,651,844) In View Of Rocci (US 6,138,669).

In rejecting claims 2-4 over Tomaka (US 6,651,844) in view of Rocci (US 6,138,669), the grounds of rejection state:

Regarding claims 2-4, Tomaka et al. discloses the pump is connected to a spraying orifice (16a) through an expulsion channel (16) (fig. 2), but does not disclose the detection means being provided in the expulsion channel. Rocci et al. teaches a dose counter for a nasal device (column 3, lines 44-50) with a detection means in the form of a pressure sensor (12) provided in an expulsion channel (7) (fig. 3) and adapted to detect the passage of a product in the expulsion chamber due to a pressure difference at the time that a product dose is sprayed (column 5, lines 118). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the nasal spray device of Tomaka with a detection means provided in an expulsion chamber as taught by Rocci in order to provide the advantage of fewer miscounts, as taught by Rocci (column 2, lines 44-47).

Office Action at pages 4-5. Applicant respectfully disagrees.

Tomaka discloses a device *where the physical actuation of the dispenser is detected*, not the passage of product as recited in claim 1. That is, in the device of Tomaka, it is the depression of the thumb button that is detected (see column 5, lines 8-12).

Tomaka thus does not disclose the detection of the dispensing of the product, but only the actuation of the device.

Further, Rocci discloses an MDI having a valve operating with pressurized propellant gas (see column 5, lines 5-9). The sensor provided by Rocci is a pressure sensor detecting the pressure burst created during dispensing of the dose (see column 5, lines 13-17). The detection in Rocci is uniquely applicable to pumps that require propellant that create a burst.

On the other hand, claim 1 clearly requires a pump operating without propellant and without any active spraying means. With such pumps, there is no pressure burst as with pressurized valves. The detection in Rocci, however, is uniquely applicable to pumps that require propellant that create a burst.

A person of ordinary skill in the art thus would never consider a document disclosing a pressurized valve, which is explicitly excluded by claim 1. In fact, one skilled in the art would be turned away from Rocci.

Furthermore, one skilled in the art would have no reason, let alone motivation, to combine the disclosures of Tomaka and Rocci, which each concern very different devices. Tomaka does not provide any product detection, and Rocci is restricted to pressurized valves.

At the filing date of the present application, it would not have been obvious to combine these two documents, and furthermore, to apply the pressure sensor of Rocci to the Tomaka device.

For at least the foregoing reasons, the Examiner is requested to reconsider and allow the claims.

New Claims

For additional claim coverage merited by the scope of the invention, Applicant is adding new claims 8-11. Claim 8 is allowable at least by reason of its dependency. Claims 9-11 are allowable at least because the prior art does not teach or suggest a sensor that senses movement of fluid through the pump and electronics that output a signal based on information from the sensor to inform the user that a dose of product has been dispensed by the pump.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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